

Golden Films and Finance Pvt. Ltd. and Another

Vs

State of Jammu and Kashmir and Others

And

M/s. M. A. Ramzana And Co.

Vs

Union of India and Others

Writ Petition No. 4074

(O. Chinnappa Reddy, K. Jagannatha Shetty JJ)

08.09.1987

JUDGMENT

CHINNAPPA REDDY, J. –

1. In a remote, inaccessible part of the State of Jammu and Kashmir, at an altitude of more than 14,000 feet lie the Paddar mines known for their blue sapphire precious stones, said to be famous throughout the world. It appears that the area remains snowbound for a greater part of the year and can only be reached by a footpath of 90 km. length from the town of Kishtwar which is itself about 230 km. from Jammu. It is stated by the respondents that there was a mining lease in respect of the Paddar mines in favour of the Jammu and Kashmir Minerals Ltd., a government company, for a period of twenty years from 1963. The very existence of this lease appears to be shrouded in some mystery since no lease deed has been produced before us in spite of the express directions of this Court at an earlier date. We were however told that consequent to an outbreak of fire on May 31, 1985 in the office of the Senior Geologist/Mining Engineer, Jammu, the lease deed was destroyed. We find it difficult to accept this statement of the respondents. Even if the original lease deed was destroyed in the fire the document could have been easily reconstructed. Copies of the document must be available in other offices besides the department of mining. Several reference to the lease must have been made in inter-departmental correspondence in the course of the twenty years from 1963 to 1983. For reasons best known to the respondents no effort was made to produce an authentic or reconstructed copy of the lease deed. It appears to us that the true reason for the non-production of the so-called lease deed is its non-existence. What has been described as a lease by the respondents was apparently not a lease under the Mineral Concession Rules but a mere government order by which an arrangement was made to work the mine, the word lease having been used to describe the arrangement for want of a more appropriate word. For one reason or the other the Jammu and Kashmir Mineral Company was unable to exploit the mines and mining operations were at a standstill for a consideration number of years. It may be said without fear of contradiction that every one of the parties proceeded on the assumption that there was no subsisting mining lease and that the Paddar Mines were available for the grant of a mining lease. There were protracted negotiations between the present petitioner, Golden Films and Finance Private Limited and the

Government of Jammu and Kashmir and the Jammu and Kashmir Minerals Company for the grant of a mining lease for exploitation the Paddar mines. On June 26, 1978, the petitioner company submitted their proposals for working the mines before a Committee of senior government officials appointed by the government company to examine such proposals. On November 23, 1978, the petitioner company was supplied with copies of proposals received from other firms for exploiting the mines and the Committee invited the petitioner company to make such changes in their original proposals as they desired in the light of the proposals received from other firms. The petitioner company submitted their revised proposals to the Jammu and Kashmir Minerals Limited. Thereafter global tenders were invited from anyone interested in exploiting the mines. On April 12, 1979, the petitioner company submitted their proposal in response to the tender notice. It is asserted in the petition and it is not contradicted by the respondents that the committee of officials of the Government of Jammu and Kashmir who examined the proposals found the petitioner company's tender the best. However, the petitioner company was asked whether they were prepared to take the firm of M/s M. A. Ramzana & Co. as a minor partner in the mining project. The petitioner company did not agree to the suggestion and wrote a letter dated October 10, 1980 to the Chief Secretary to the Government of Jammu and Kashmir pointing out that their tender was adjudged the best on merits and therefore, it was right and proper that the right to exploit the mines should be awarded to them. There was no reply to this letter. Thereafter the petitioner company submitted a formal application under Rule 22 of the Mineral Concession Rules to the Government for the grant of a mining lease. This was on February 7, 1981. As the application was not disposed of within the period prescribed by the Rules, it was deemed to have been rejected and the petitioner company preferred a revision to the Central Government. The Central Government by an order dated April 29, 1982 allowed the revision petition and directed the State Government to pass final orders on merits within two hundred days from the date of receipt of the order of the Central Government. It further directed that if the State Government failed to do so it would be open to the petitioner company to seek redress in a court of law. As the State Government, despite reminders, failed to dispose of the petitioner company's application, the petitioner company invoked the Jurisdiction of the Court under Article 32 of the Constitution to direct the State Government to grant a lease or in the alternative to consider the application of the petitioner in accordance with law. The State of Jammu and Kashmir is the first respondent, the Union of India is the second respondent, M/s M. A. Ramzana is the third respondent, the National Mineral Development Corporation is the fourth respondent and the Jammu and Kashmir Minerals Limited is the fifth respondent. On behalf of the Government of Jammu and Kashmir, a counter-affidavit has been filed in which it has been stated that the application of the petitioner company for grant of a mining lease could not be considered as the lease in favour of the Jammu and Kashmir Minerals Limited which had been granted in August, 1963 for a period of twenty years was still subsisting. It was, however, admitted that the State Corporation was unable to exploit the mines to extent it should have done because of financial constraints and the inaccessibility of the area. The discussions which the Corporation had with various entrepreneurs were admitted. It was admitted that the petitioner company made an application under the Rules. It was stated that Government of Jammu and Kashmir considered the application to be premature, in view of the subsisting lease in favour of the Jammu and Kashmir Minerals Corporation. It was further stated that through the lease expired in 1983, the State Government had not notified the Paddar mines as available for grant of a fresh lease as the area was proposed to be reserved by the State Government for being worked by a Public Sector Undertaking. A counter-affidavit was also filed by the Jammu and Kashmir Minerals Limited, the government corporation. It was admitted that the government company was unable to conduct any mining operations after 1978 because of financial difficulties. The discussions which the company had with various entrepreneurs were admitted. The tender notice and the response of different parties were

also admitted. It was further stated that out of a total of eleven offers received and considered by the government the offers of the petitioner company and Ramzana & Co. were considered to be the most viable and since Ramzana & Co. was a local entrepreneur it was thought desirable to award the lease jointly to the petitioner company and Ramzana & Co. But as the petitioner company was not willing, it was decided to recommend that Ramzana & Co. should be granted the lease of the mines. Accordingly, the State Government addressed the Central Government for its approval for granting a lease in favour of Ramzana & Co. The Central Government, however, declined to accord its approval. It was further stated that at a meeting held in 1984 between the officials of the State Government and the Chairman and Adviser to the National Minerals Development Corporation, a decision was taken to grant a prospecting licence to National Minerals Development Corporation and to consider the question of granting a mining lease in favour of a joint venture company. What is of important and significance to be noted here is that the State Government did recommend the grant of a lease to Ramzana & Co. and sought the approval of the Central Government for that purpose in 1981 itself when the so-called lease in favour of the government corporation was still subsisting. This is sufficient to expose the hollowness of the claim now made in the counter-affidavits that the application of the petitioner company for the grant of a mining lease was not considered on merits as it was thought to be premature in view of the lease subsisting in favour of the Jammu and Kashmir Minerals Limited. As mentioned by us earlier, all parties including the government and the corporation acted on the assumption that the lease, if any, was not subsisting and that the Paddar mines were available for exploitation by grant of a lease. It is on that assumption that we must now proceed. It does not lie in the mouth of the government or the corporation to put forward the alleged lease in favour of the corporation as a bar to the grant of a lease to the petitioner company. The statement in the counter-affidavit that it is proposed to reserve the area for the grant of a mining lease in favour of a Public Sector Undertaking is equally unsubstantial. Under Rule 58 of the Mineral Concession Rules, it is open to the State Government by notification in the official gazette to reserve any area for exploitation by the government, a corporation established by any Central, State or Provincial Act or a government company within the meaning of Section 617 of the Companies Act. It is not disputed that the State Government has not, in the present case, issued any notification reserving the Paddar mines area for exploitation by the government or a government corporation or a government company. In the absence of such a notification we see no basis for the statement in the counter-affidavit that the government is not prepared to consider the application of the petitioner company as the area is proposed to be reserved for exploitation by a Public Sector Undertaking. We have, therefore, no option but to allow the writ petition and to direct the Government of Jammu and Kashmir to consider and dispose of, on merits, and in accordance with law, the application of the petitioner company for the grant of a mining lease. This should be done within a period of three months from today. The petitioner is entitled to costs.

2. The Writ Petition No. 11971/85 is dismissed.

</html